

WASHINGTON PARK WILDERNESS ACT OF 1988

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2165]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2165) to designate wilderness within Olympic National Park, Mount Rainier National Park, and North Cascades National Park Complex in the State of Washington, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended to pass.

The amendment is as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

That this bill may be cited as the "Washington Park Wilderness Bill of 1988".

TITLE I.—OLYMPIC NATIONAL PARK WILDERNESS

SEC. 101. DESIGNATION.

(a) WILDERNESS.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.; 78 Stat. 890), certain lands in the Olympic National Park, Washington, which—

(1) comprise approximately eight hundred seventy six thousand six hundred and sixty nine acres of wilderness, and approximately three hundred seventy eight acres of potential wilderness additions, and

(2) are depicted on a map entitled "Wilderness Boundary, Olympic National Park, Washington", numbered 149/60,051A and dated August 1988, are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System. Such lands shall be known as the Olympic Wilderness.

SEC. 102. WOLF CREEK POWERLINE.

The Secretary is authorized to upgrade, maintain and replace, as necessary, the Wolf Creek underground powerline to Hurricane Ridge: *Provided*, That to the extent practicable, such maintenance and operation shall be conducted in such a manner as to remain consistent with wilderness management.

SEC. 103. PAYMENT TO CLALLAM COUNTY.

There is hereby authorized to be appropriated not to exceed \$155,000 to the Secretary of the Interior to make a payment to the Clallam County Historical Society and Museum of Port Angeles, Washington, to compensate the Society for its possessory interest in the National Park Service visitor center, Pioneer Memorial Museum, Olympic National Park, Washington. Upon relinquishment by the Clallam County Historical Society of all interests and use in the facility, the Secretary of the Interior shall make payment to the Clallam County Historical Society and acceptance of payment shall be considered full and just compensation for the Society's participation in the construction of the Pioneer Memorial Museum.

SEC. 104. GENERAL PROVISIONS.

(a) MISDEMEANOR PENALTIES.—Section 3 of the Act of March 6, 1942 (56 Stat. 136; 16 U.S.C. 256b) is hereby revised as follows: after "shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than" strike "\$500" and insert in lieu thereof "\$25,000".

(b) FORFEITURE OF PROPERTY.—Section 4 of the Act of March 6, 1942 (56 Stat. 135; 16 U.S.C. 256c) is hereby revised to read as follows:

"SEC. 4. All guns, bows, traps, nets, seines, fishing tackle, clothing, teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or means of transportation of every nature or description used by any person or persons or organizations within the limits of the park when engaged in or attempting to engage in killing, trapping, ensnaring, taking or capturing such wild birds, fish or animals, or taking, destroying or damaging such trees, plants, or mineral deposits contrary to the provisions of this Act or the rules and regulations promulgated by the Secretary of the Interior shall be forfeited to the United States and may be seized by the officers in the park and held pending prosecution of any person or persons or organization arrested under or charged with violating the provisions of this Act, and upon conviction under this Act of such persons or organizations using said guns, bows, traps, nets, seines, fishing tackle, clothing, teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or other means of transportation of every nature and description used by any person or persons or organization, such forfeiture shall be adjudicated as a penalty in addition to the other punishment prescribed in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior: *Provided*, That the forfeiture of teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or other means of transportation shall be in the discretion of the Court."

(c) FUGITIVES FROM JUSTICE.—(1) The Act of March 6, 1942, (56 Stat. 135 et. seq.; 16 U.S.C. 256) is hereby revised as follows: Section 5 is renumbered as Section 6 and succeeding sections are renumbered accordingly and a new Section 5 is inserted as follows:

"SEC. 5. All fugitives from justice taking refuge in Olympic National Park shall be subject to the same laws as refugees from justice found in the State of Washington."

(2) The Act of March 6, 1942 (56 Stat. 137, 16 U.S.C. 256i) is hereby revised as follows: after "the provisions of sections 3" strike "and" and insert in lieu thereof ","; after "4" insert "and 5".

(d) TECHNICAL CORRECTIONS TO BOUNDARIES.—The Act of November 7, 1986 (Public Law 99-635; 100 Stat. 3527) revising the boundaries of Olympic National Park is hereby amended as follows:

(1) In section 1(a)(2) after "48 degrees 23 minutes north and 47 degrees" strike "38" and insert in lieu thereof "34".

(2) In section 1(a)(2) after "all surveyed and unsurveyed islands", insert ", above the point of lowest low tide,"; and at the end of the paragraph, strike "north;" and insert "north: *Provided*, That such lands as are identified in this paragraph shall continue to be open to fishing and to the taking of shellfish in conformity with the laws and regulations of the State of Washington".

(3) In section 1(b) after "numbered 149/60,030A, sheets 1 through" strike "10" and insert in lieu thereof "9";

(4) In section 2(a) after "within section 15, township", strike "15" and insert in lieu thereof "24";

(5) In section 2(a) after "Provided, however, that the Secretary of Agriculture shall" strike "not"; and

(6) Section 4 is renumbered as Section 5 and a new Section 4 is inserted as follows: "Sec. 4. Effective upon acceptance thereof by the State of Washington, the jurisdiction which the United States acquired over those lands excluded from the boundaries of Olympic National Park by this Act is hereby retroceded to the State."

SEC. 105. KALALOCH VISITOR CENTER.

The Secretary is directed to complete a study for the location of a year round visitor center in the Kalaloch area of Olympic National Park. Such study shall include the location, size and cost estimates for the design, planning and construction of the visitor center and support facilities. The study shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate by March 1, 1989. The Secretary is authorized to construct such visitor center subject to the appropriation of funds.

TITLE II.—NORTH CASCADES NATIONAL PARK SERVICE COMPLEX WILDERNESS

SEC. 201. DESIGNATION.

(a) WILDERNESS.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.; 78 Stat. 890), certain lands in the North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area, Washington, which—

(1) comprise approximately six hundred and thirty four thousand, six hundred and fourteen acres of wilderness, and approximately five thousand, two hundred and twenty six area of potential wilderness additions, and

(2) are depicted on a map entitled "Wilderness Boundary, North Cascades National Park Service Complex, Washington", numbered 168-60-186 and dated August 1988,

are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System. Such lands shall be known as the Stephen Mataver Wilderness.

SEC. 202. HYDROELECTRIC PROJECTS.

Section 505 of the Act of October 2, 1968 (82 Stat. 930; 16 U.S.C. 90d-4) is amended as follows: strike "in the recreation areas", and insert in lieu thereof "in the lands and waters within the Skagit River Hydroelectric Project, Federal Energy and Regulatory Commission Project 553, including the proposed Copper Creek, High Ross, and Thunder Creek elements of the Project; and the Newhalem Project, Federal Energy and Regulatory Commission Project 2705, within the Ross Lake National Recreation Area; the lands and waters within the Lake Chelan Project, Federal Energy and Regulatory Commission Project 637; the Company Creek small hydroelectric project at Stehekin within the Lake Chelan National Recreation Area; and existing hydrologic monitoring stations necessary for the proper operation of the hydroelectric projects listed herein."

SEC. 203. LAND ACQUISITION FOR ADMINISTRATION FACILITIES.

Section 301(a) of the Act of October 2, 1968 (82 Stat. 927; 16 U.S.C. 90b) is hereby amended to add a new subsection as follows:

"(b) The Secretary is hereby authorized to acquire, with the consent of the owner, lands outside of the authorized boundaries of North Cascades National Park Service Complex for the purpose of construction and operation of a backcountry information center not to exceed five acres. The Secretary of the Interior is further authorized to acquire with the consent of the owner, lands for the construction of a headquarters and administrative site or sites, for the North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area not to exceed 10 acres. The lands so acquired shall be managed as part of the park."

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to complete the land acquisitions authorized pursuant to Section 203 of this Act.

SEC. 205. RENEWABLE NATURAL RESOURCE USE IN RECREATION AREAS.

Section 402(a) of the Act of October 2, 1968 (82 Stat. 928; 16 U.S.C. 90c-1) is hereby amended to read as follows:

"The Secretary shall administer the recreation areas in a manner which in his judgement will best provide for (1) public outdoor recreation benefits and (2) conservation of scenic, scientific, historic, and other values contributing to public enjoy-

ment. Within that portion of the Lake Chelan National Recreation Area which is not designated as wilderness, such management, utilization, and disposal of renewable natural resources and the continuation of existing uses and developments as will promote, or are compatible with, or do not significantly impair public recreation and conservation of the scenic, scientific, historic, or other values contributing to public enjoyment, are authorized. In administering the recreation areas, the Secretary may utilize such statutory authorities pertaining to the administration of the national park system, and such statutory authorities otherwise available to him for the conservation and management of natural resources as he deems appropriate for recreation and preservation purposes and for resource development compatible therewith. Within the Ross Lake National Recreation Area the removal and disposal of trees within power line rights-of-way are authorized as necessary to protect transmission lines, towers, and equipment;": *Provided*, That to the extent practicable, such removal and disposal of trees shall be conducted in such a manner as to protect scenic viewsheds."

SEC. 206. MINERAL RESOURCE USE IN RECREATION AREAS.

Section 402(b) of the Act of October 2, 1968 (82 Stat. 928; 16 U.S.C. 90c-1b) is hereby amended to read as follows:

"The lands within the recreation areas, subject to valid existing rights, are hereby withdrawn from all forms of appropriation or disposal under the public land laws, including location, entry, and patent under the United States mining laws, and disposition under the United States mineral leasing laws; *Provided*, however, that within that portion of the Lake Chelan National Recreation Area which is not designated as wilderness, sand, rock and gravel may be made available for sale to the residents of Stehekin for local use so long as such sale and disposal does not have significant adverse effects on the administration of the Lake Chelan National Recreation Area."

TITLE III.—MOUNT RAINIER NATIONAL PARK WILDERNESS

SEC. 301. DESIGNATION.

(a) **WILDERNESS.**—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.; 78 Stat. 890), certain lands in the Mount Rainier National Park, Washington, which—

(1) comprise approximately two hundred sixteen thousand eight hundred fifty five acres of wilderness, and

(2) are depicted on a map entitled "Wilderness Boundary, Mount Rainier National Park, Washington", numbered 105-20,014A and dated July 1988, are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System. Such lands shall be known as the Mount Rainier Wilderness.

SEC. 302. BOUNDARY ADJUSTMENTS.

(a) **PARK BOUNDARY ADJUSTMENTS.**—The boundaries of the Mount Rainier National Park as established in the Act of March 2, 1899 (30 Stat. 993), as amended; (16 U.S.C. 91-110b), are further revised to add to the Park approximately two hundred and forty acres, and to exclude from the park approximately thirty-one and one-half acres, as generally depicted on the map entitled "Mount Rainier National Park Proposed 1987 Boundary Adjustments", numbered 105-80,010B and dated January 1987, which shall be on file and available for public inspection in the Washington office of the National Park Service, United States Department of the Interior and at Mount Rainier National Park.

(b) **FOREST BOUNDARY ADJUSTMENT.**—The boundaries of the Snoqualmie National Forest and of the Gifford Pinchot National Forest, are hereby revised to include in the Snoqualmie National Forest approximately thirty-one and one-half acres, to exclude from the Snoqualmie National Forest approximately thirty acres, and to exclude from the Gifford Pinchot National Forest approximately two hundred and ten acres, as generally depicted on a map entitled "Mount Rainier National Park Proposed 1987 Boundary Adjustments", numbered 105-80,010B, and dated January 1987, which shall be on file and available for public inspection in the Washington, D.C. office of the Forest Service, United States Department of Agriculture and at the Snoqualmie and Gifford Pinchot National Forests.

(c) **ADMINISTRATION OF PARK LAND.**—(1) Federal lands, and interests therein formerly within the boundary of the Snoqualmie National Forest and the Gifford Pinchot National Forest, which are included within the boundary of the Mount Rainier National Park pursuant to this Act are, subject to valid existing rights, hereby transferred to the administrative jurisdiction of the Secretary of the Interior for ad-

ministration as part of the Park, and shall be subject to all the laws and regulations of the park.

(2) The Secretary of the Interior is authorized to accept either concurrent or exclusive jurisdiction over lands and waters included within Mount Rainier National Park by this Act. The Secretary shall notify in writing the Governor of the state of Washington of the acceptance of any such jurisdiction ceded to the United States by the state. The existing exclusive federal jurisdiction, where it exists in the park, shall remain in effect until such time as the Secretary and the Governor shall agree upon the terms and conditions of concurrent legislative jurisdiction for said park pursuant to Section 320(i) of the Act of October 21, 1976 (90 Stat. 2741).

(3) **AUTHORIZATION OF LAND ACQUISITION.**—The Secretary of the Interior is authorized to acquire from willing sellers by donation, purchase with donated or appropriated funds, exchange, bequest, or otherwise all non-Federal lands, waters, and interests therein included within the boundary of the Mount Rainier National Park pursuant to this Act.

(d) **ADMINISTRATION OF FOREST LAND.**—(1) Federal lands, and interests therein formerly within the boundary of the Mount Rainier National Park, which are excluded therefrom and are included within the boundaries of the Snoqualmie National Forest pursuant to this Act are, subject to valid existing rights, hereby transferred to the administrative jurisdiction of the Secretary of Agriculture for administration as part of the Forest, and shall be subject to all the laws and regulations applicable to the National Forest System.

(2) For the purposes of Section 7 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 903, as amended; 16 U.S.C. 4601-9), the boundaries of the Snoqualmie National Forest and the Gifford Pinchot National Forest, as modified pursuant to this Act, shall be treated as if they were the boundaries of those national forests on January 1, 1965.

(3) Effective upon acceptance thereof by the state of Washington, the jurisdiction which the United States acquired over those lands excluded from the boundaries of the Mount Rainier National Park by this Act is hereby retroceded to the state.

SEC. 303. PARADISE POWERLINE.

The Secretary is authorized to upgrade, maintain and replace as necessary, the Paradise powerline from Longmire to Paradise: *Provided*, That to the extent practicable, such maintenance and operation shall be conducted in such a manner as to protect scenic viewsheds.

TITLE IV.—GENERAL ADMINISTRATIVE PROVISIONS

(a) **ADMINISTRATION.**—(1) Subject to valid existing rights, the wilderness areas designated under Titles I, II, and III of this Act shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated as wilderness, except that reference to the Secretary of Agriculture shall be deemed, where appropriate, to be a reference to the Secretary of the Interior, and any reference to the effective date of the Wilderness Act shall be deemed, where appropriate, to be a reference to the effective date of this Act.

(2) Lands designated as potential wilderness additions shall be administered by the Secretary of the Interior insofar as practicable as wilderness until such time as said lands are designated as wilderness. Any lands designated as potential wilderness additions, upon publication in the Federal Register of a notice by the Secretary of the Interior that all uses thereon that are inconsistent with the Wilderness Act have ceased or that non-federal interests in land have been acquired, shall thereby be designated as wilderness and managed accordingly.

(3) Congress does not intend that wilderness areas designated under this Act lead to the creation of protective perimeters or buffer zones around such wilderness areas. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(b) **MAP AND DESCRIPTION.**—(1) As soon as practicable after the effective date of this Act, the Secretary of the Interior shall file a map of the wilderness areas and a legal description of its boundaries with the Committee on Energy and Natural Resources of the United States Senate, and the Committee on Interior and Insular Affairs of the United States House of Representatives. Such maps and legal descriptions shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in the maps and legal descriptions may be made. Such maps and legal descriptions of the boundaries shall be on file and available for public inspection in the office of the Director of the National Park

Service, Department of the Interior, and in the office of the appropriate Superintendent.

(2) Boundaries adjacent to paved and unpaved roads shall be drawn as narrowly as is practicable to allow for necessary maintenance and repairs to existing roads. Such boundaries should not, in general, exceed 200 feet from the centerline of paved roads and 100 feet from the center of unpaved roads; *Provided, however,* That larger boundaries may be drawn only as the Secretary deems necessary to exclude from the wilderness existing developments, improvements, and structures adjacent to existing roads, as well as areas needed to maintain and repair existing roads. *Provided further,* That to the extent practicable, undeveloped areas adjacent to all roads shall be managed as if designated as wilderness.

TITLE V.—MISCELLANEOUS PROVISIONS

SEC. 501. WILD AND SCENIC RIVERS.

Section 3(a), paragraph (60), of the Wild and Scenic Rivers Act, which designates the Klickitat River in the State of Washington as a component of the national wild and scenic rivers system, is amended to add the following sentence at the end of the paragraph: "The boundaries of the designated portions of the Klickitat River shall be as generally depicted on a map dated November, 1987, and entitled 'Klickitat National Recreation River, River Management Area: Final Boundary,' which is on file in the office of the Chief, Forest Service, Washington, D.C.".

SEC. 502. RESERVATION OF WATER RIGHTS.

Within each of the areas designated as wilderness pursuant to this Act, the Congress expressly reserves a right to all the waters that arise upon or under or flow through such areas: *Provided,* That this reserved right shall be exercised only to protect wilderness values within the wilderness boundaries. The priority date of such reserved rights shall be the date of enactment of this Act. The federal water rights reserved by this Act shall be subject to valid existing water rights and shall be in addition to any water rights previously appropriated or reserved by the United States for other than wilderness purposes. The United States shall promptly claim the water rights reserved by this Act in a proceeding consistent with the McCarran Amendment (43 U.S.C. 666).

2. Amend the title so as to read:

A bill to designate wilderness within Olympic National Park, Mount Rainier National Park, and North Cascades National Park Service Complex in the State of Washington, and for other purposes.

PURPOSE OF THE MEASURE

The primary purpose of S. 2165, as ordered reported, is to designate a total of approximately 1,728,138 acres of land as wilderness within Olympic National Park, Mount Rainier National Park, and the North Cascades National Park Service Complex in the State of Washington.

BACKGROUND AND NEED

The Wilderness Act of 1964 included a provision directing the Forest Service, Fish and Wildlife Service, and the National Park Service to review tracts or roadless land 5,000 acres or larger to determine their suitability as wilderness. Recommendations were to be forwarded to the Congress within ten years (by no later than December, 1974). Most of these recommendations have been transmitted and the Congress has been acting on them ever since. Of course, in recent years, the Congress has mostly focused on resolving the roadless area debate with regard to the National Forest System through the enactment of numerous state-wide wilderness bills. Still, a number of park and wildlife refuge wilderness bills

have been enacted on an omnibus, state-wide, or area-by-area basis since 1974.

With regard to Washington State, its state-wide National Forest System wilderness bill was enacted in 1984. A number of wilderness areas in units of the National Wildlife Refuge System in Washington were designated in the mid-1970's. The passage of S. 2165, dealing with roadless lands within the boundaries of national parks, will virtually complete roadless area review mandate of the Wilderness Act of 1964 for the State of Washington.

Specifically, S. 2165, as ordered reported, would designate 876,669 acres of wilderness and 378 acres of "potential wilderness" in Olympic National Park; 634,614 acres of wilderness and 5,226 acres of "potential wilderness" in the North Cascades National Park Service Complex; and 216,855 acres of wilderness in Mount Rainier National Park. "Potential wilderness" consists of lands included within the wilderness boundary but not yet acquired by the Federal government or lands on which there is some incompatible use. This designation gives the Secretary the authority to designate these lands as wilderness, without further congressional action, at such time as the lands are acquired or the incompatible use terminated.

S. 2165 also includes a number of miscellaneous provisions, boundary adjustments, and minor land exchanges related to these park units and the adjacent forest system lands.

LEGISLATIVE HISTORY

S. 2165 was introduced by Senators Evans and Adams on March 15, 1988. A House companion measure was introduced at the same time by Congressman Rod Chandler. A hearing before the Subcommittee on Public Lands, National Parks and Forests was conducted on June 28, 1988.

At the business meeting on Wednesday, August 10, 1988, the Senate Committee on Energy and Natural Resources ordered S. 2165, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 10, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 2165 if amended, as described herein.

COMMITTEE AMENDMENT

During the Committee's consideration of S. 2165, an amendment in the nature of a substitute was adopted. This amendment includes a slightly modified text of the bill as introduced and contains numerous conforming and technical changes.

The substitute amendment also incorporates the following substantive changes: an amendment legislatively ratifying the boundaries established by the Forest Service for the Klickitat Wild and Scenic River; authorization of a study for the Kalaloch Visitor Center in the Olympic National Park; inclusion of the Kalaloch Rocks into the Olympic Park boundaries; inclusion of the inner

tidal zone of offshore islands within Olympic Park into the park boundary; and language regarding the reservation of Federal water rights for the wilderness areas designated by this Act.

A more detailed discussion of these changes is included in the Section-by-Section Analysis of this report.

SECTION-BY-SECTION ANALYSIS

Title I contains provisions regarding Olympic National Park.

Section 101(a) designates 876,669 acres of wilderness and 594 acres of potential wilderness within the Park.

Section 102 authorizes the Secretary of the Interior to maintain and replace an underground powerline within the proposed wilderness. To the extent practicable, such activities are to be conducted in a manner consistent with management of the area as wilderness.

Section 103 authorizes not to exceed \$155,000 to acquire the possessory interest of the Clallum County Historical Society in the visitor center at the park.

Section 104, subsections (a), (b) and (c) make numerous technical and conforming changes in the 1942 law designating Olympic National Park regarding the enforcement of certain laws and regulations in the park. Subsection (a) increase the maximum fine for a misdemeanor violation of park regulation to the amount set forth for misdemeanors generally under Section 3571 of Title 18, United States Code (\$25,000); subsection (b) adds references to machinery, logging equipment, motor vehicles, aircraft, and boats to the list of properties that may be forfeited by violators of certain park regulations; and subsection (c) adds language clarifying that fugitives shall be treated the same within the park as elsewhere in the State of Washington.

Subsection (d) makes several amendments, most of them technical, to the legislative enacted in 1986 revising the park boundary. These amendments deal with the description and administration of lands excluded from the park by that Act. The substitute also adds a provisions to the bill as introduced including the inner tidal zone of the offshore islands located inside the park within the official park boundary.

Section 105, which was added to the bill by the substitute amendment, provides for a study of a year round visitor center in the Kalaloch area of Olympic National Park.

Title II contains provisions regarding the North Cascades National Park Service Complex.

Section 201 designates a total of approximately 634,614 acres of wilderness and approximately 5,226 acres of potential wilderness in North Cascades National Park, Ross Lake National Recreation Area and Lake Chelan National Recreation Area. These lands are to be known as the "Stephen Mather Wilderness" in honor of the first Director of the National Park Service.

Section 202 amends the Act of October 2, 1968, which established the North Cascades National Park Service Complex, by specifically enumerating certain lands, sites, and projects within the Complex where the provisions of the Federal Power Act regarding hydro-project development apply. Under existing law, all lands within the

recreation areas would be subject to the applicability of these provisions of the Federal Power Act.

Section 203 provides authority for the Secretary to acquire, with the consent of the owner, lands outside the boundary of the National Park Service Complex for a visitor and information center as well as a headquarters and administrative site or sites.

Section 204 authorizes the funds necessary for such acquisition.

Section 205 revises Section 402(a) of the Act of October 2, 1968, to clarify that most consumptive uses (timber harvesting, grazing, etc.) are generally not permitted within the national recreation areas. However, within the portion of the Lake Chelan National Recreation Area not designated as wilderness, the management, utilization, and disposal of renewable natural resources and the continuation of existing uses and development which will promote, are compatible with or do not significantly impair scenic, scientific, historic values are permitted. In addition, the removal of trees within Ross Lake National Recreation Area to maintain the transmission lines and rights-of-way of Seattle City Light Company is authorized if done in a manner that protects scenic viewsheds.

Section 206 amends the Act establishing the North Cascades National Park Service Complex by withdrawing the recreation areas, subject to valid existing rights, from the mineral leasing laws, all forms of disposition under the public land laws, and appropriation under the mining laws. Existing law withdrawn the recreation areas only from the application of the mining laws. An exception is made for the sale of sand, rock, and gravel to residents of Stehekin within lake Chelan National Recreation Area for local use so long as such disposal does not have an adverse impact on the National Recreation Area.

Title III contains provisions regarding Mount Rainier National Park.

Section 301 designates 216,855 acres of Mount Rainier National Park as wilderness.

Section 302 revises the boundary of the park by adding 240 acres of adjacent national forest lands to the park and by excluding 31.5 acres from the park and including the lands in the adjacent national forest. This section also includes several conforming provisions regarding the administration of the lands by the respective land managing agencies following the transfer.

Section 303 authorizes the Secretary to upgrade, maintain and replace, if necessary, to Paradise Powerline from Longmire to Paradise within the proposed wilderness. The section was not in the bill as introduced.

Title IV includes miscellaneous management provisions regarding the wilderness areas established by S. 2165.

Subsection (a) contains standard language concerning the administration of the wilderness area by the Secretary of the Interior; the administration of those lands designated as "potential wilderness additions"; and buffer zones.

Subsection (b) contains standard language regarding the preparation and filing of maps. It also includes a provision regarding the drawing of wilderness boundaries adjacent to paved and unpaved roads. In general, such boundaries should be drawn as narrowly as possible to include the maximum amount of land in wilderness.

Language is also included, however, to permit the Secretary to exclude from the wilderness boundary developments, improvements, structures, etc. located adjacent to existing roads.

Title V includes two miscellaneous provisions.

Section 501 legislatively ratifies the boundary for the Klickitat Wild and Scenic River established pursuant to the plan prepared last year for the river by the Forest Service.

Section 502 provides for the express reservation of a right to the waters that arise upon, under, or flow through the wilderness areas designated by the Act. This right is only to be exercised to protect wilderness values within the boundaries of the wilderness areas. This federal reservation is subject to valid existing rights; shall have a priority date of the date of the enactment of this Act; and shall be in addition to any water rights previously appropriated or reserved by the United States for other than wilderness purposes.

TASK DIRECTIVE ON PARK STUDY

During the hearings held on S. 2165, several witnesses expressed their support for the National Park Service conducting an ecological study of the three national park units: Olympic, Mount Rainier, and the North Cascades National Park Service Complex. Concerns were raised as to the impacts on ecosystems and natural resources within the national parks from land use activities outside of the national park boundaries. Typically, boundaries were not drawn to follow natural ecological or hydrological divides but are based on geopolitical or geomorphological features, which may not be the optimum situation for protecting wildlife and natural resources in the parks.

Concerns were also raised about the impact of designating wilderness in these national parks, particularly on local communities and the local economies and the recreational opportunities provided to an increasingly outdoor recreation oriented public. There have not been any studies of the economic impacts of these national parks for quite some time.

The Committee intends that the National Park Service shall prepare a task directive. The task directive is a written agreement between the park regions office responsible for planning on how an approved task would be accomplished. This written document should specifically define the ecological, economic and recreational issues to be addressed in a park study encompassing Olympic National Park, Mount Rainier National Park and the North Cascades National Park Service Complex. The task directive shall include, but not be limited to: an identification of the lead agency or agencies responsible for completing the task as well as cooperating entities who should participate in the process, identifying special constraints directly affecting the task, information and data-gathering needs, compliance requirements, specific talents needed to complete the task, a time frame needed for completing the study, and public involvement and coordination requirements. In meeting the requirements of the National Environmental Policy Act of 1969, the process of public involvement shall include the views of those who present the full spectrum of users of the affected lands, including but not limited to representatives of recreational user groups

and representatives of the forest products industry as well as representatives of conservation organizations and the public at large. The task directive shall be transmitted to the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources within one year of the date of enactment of this Act. With this information, the Committee will be in a better position to assess the merits of authorization of a formal park study.

STUDY OF THE WATERSHED OF LAKE OZETTE

The Committee directs the National Park Service to conduct a study of the watershed of Lake Ozette, with particular focus on the immediate scenic backdrop of the Lake. This study is to examine and consider the various alternatives to protect this area. The study should also examine alternatives for acquisition, including the potential for land exchanges and acquisition of interests in the land.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2165. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2165, as reported.

EXECUTIVE COMMUNICATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2165, the Washington Park Wilderness Bill of 1988, as ordered reported by the Senate Committee on Energy and Natural Resources, August 10, 1988. Enactment of this bill would result in costs to the federal government of approximately \$240,000 in fiscal year 1989, assuming appropriation of the relevant sums. As well, there may be additional costs in future years, depending on the results of the studies called for in this legislation. The bill would result in no costs to state and local governments.

S. 2165 would designate certain lands within Olympic National Park, Mount Rainier National Park and North Cascades National

Park Service Complex as wilderness, bringing them under the National Wilderness Preservation System. The bill would authorize the Secretary of the Interior to pay \$155,000 to the Clallum County Historical Society and Museum of Port Angeles, to compensate them for their contribution to the visitor center. It would also authorize a study to recommend a location for a visitor center in the Kalaloch area.

The bill would authorize the Secretary of the Interior to acquire up to 15 acres of land for a visitor center and an administrative complex in the North Cascades complex, as well as any nonfederal land within the Mount Rainier park boundaries.

The immediate costs of the bill, in fiscal year 1989, would be the payment to the Clallum County Historical Society of \$155,000, the cost of the study for the Kalaloch visitor center and the cost of the 15 acres of land. Based on discussions with the agency, we estimate the cost of the study to be no more than \$10,000 and the cost of the land to be about \$5,000 per acre, for a total of \$75,000. Total costs in fiscal year 1989 would therefore be \$240,000.

There are two other potential costs in future years. First, the bill would give the Secretary of the Interior authority to acquire nonfederal lands which fall within the Mount Rainier National Park boundary. The magnitude of these costs is uncertain, as no title search has been done to determine the amount of land currently held by nonfederal owners. Second, at some point, appropriation of funds will be required to build the visitor center and administration buildings in the North Cascades park complex. These are not provided for in this bill, and would cost about \$100,000 and \$1 million, respectively.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

EXECUTIVE COMMUNICATIONS

On April 21, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Departments of Agriculture, Interior and the Office of Management and Budget setting forth executive views on S. 2165. These reports had not been received at the time the report on S. 2165 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF JAMES C. OVERBAY, DEPUTY CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to offer the Department of Agriculture's views on S. 2165.

The Department of Agriculture recommends enactment of S. 2165 insofar as it would affect this Department. We defer to the

Department of the Interior regarding those portions of the bill affecting lands managed by the National Park Service.

S. 2165 would designate three areas in the State of Washington as components of the National Wilderness Preservation system, to be administered by the Secretary of the Interior. These three wilderness designations would not affect the Department of Agriculture.

The bill would also add 240 acres to the Mount Rainier National Park and delete 31.5 other acres from the Park. The boundaries of the Mount Baker-Snoqualmie National Forest would be revised to include the 31.5 acres deleted from the Park and to delete 30 acres from the Forest which would be added to the Park. The boundaries of the Gifford Pinchot National Forest would be revised to delete 210 acres from the Forest to be added to the Park.

The boundary adjustments affecting the Mount-Baker Snoqualmie National Forest are practical solutions to long-standing problems for both the National Park Service and the Forest Service. The Crystal Mountain Ski area is predominately located on National Forest lands, although some facilities were constructed within the Park through an administrative oversight. As a result, the ski area has special use permits for both the Park Service and the Forest Service. The transfer of 31.5 acres from the Park Service to the Forest Service would facilitate management of the ski area for both the permittee and the Government.

The transfer of 30 acres from the Mount Baker-Snoqualmie National Forest to the Park would improve management of these lands for both agencies. This 30-acre parcel is separated from the bulk of the Forest and is currently used as a trailhead by Park visitors.

The transfer of 210 acres of the Gifford Pinchot National Forest to the Park would also improve management of these lands. The Stevens Canyon Road is entirely within the Park, with the exception of a small loop onto the Forest. The road and land associated with the loop are primarily used by Park visitors and should be managed by the National Park Service.

We support all of the foregoing adjustments in boundaries and jurisdictions between the two agencies.

We recommend one technical amendment to the bill. The "Mount Baker-Snoqualmie National Forest" is an administrative consolidation of two Forests and is not the proclaimed National Forest. Therefore, references to the "Mount Baker-Snoqualmie National Forest" should be changed to the "Snowqualmie National Forest".

This concludes my testimony. I will be pleased to answer any question you might have.

STATEMENT OF DENIS GALVIN, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to testify in favor of S. 2165, a bill to designate wilderness in three of our premier national parks in the State of Washington. This measure would also make certain administrative corrections in legislation affecting these parks as would it also

adjust the boundaries of Mount Rainier National Park to address management concerns of both the National Park Service and the U.S. Forest Service.

Mr. Chairman, we support the enactment of S. 2165 if amended as suggested herein.

The three national park units included in our discussions today, including the two national recreation areas contiguous with North Cascades National Park represent perhaps some of the finest resources, both natural and cultural, to be found on this or any other continent. The Cascade and Olympic Mountains of northwest Washington contain some of the most rugged, majestic scenery one could ever imagine. From the fog-shrouded coast with booming surf and wave manicured beaches to North America's finest temperate rain forest to the spectacular alpine country dotted with sparkling lakes, lush meadows, and glaciers, the three national park units of the Pacific Northwest are a tribute to Man's forethought through their preservation and development. S. 2165 is an attempt to take the final step in this long journey begun with the establishment of Mount Rainier National Park by Congress in 1899. If enacted it would designate wilderness or potential wilderness in Olympic National Park, Mount Rainier National Park and North Cascades National Park Complex. Further, there would be authorized a transfer of lands between Mount Rainier National Park and Mount Baker-Snoqualmie National Forest to accommodate the placement of a ski area on lands totally within the national forest, and two minor boundary adjustments in the same boundary to provide for unified management of small segments of two roads which momentarily leave the park to enter the forest, only to return again to the park. Finally, several administrative irregularities and uncertainties resulting from previous legislative actions would be corrected or clarified.

Olympic National Park contains 922,626 acres. On June 13, 1974, the President recommended to Congress that 862,139 acres be designated as wilderness. Based on several additions to the park since then and further planning, we support the wilderness proposed in S. 2165 of 871,730 acres. With respect to the 594 acres of potential wilderness included in the bill, we are still studying whether all the private lands involved which would require Federal acquisition as wilderness warrant such designation.

North Cascades National Park Service Complex includes the 504,780-acre North Cascades National Park, the 117,574-acre Ross Lake National Recreation Area, and the 61,889-acre Lake Chelan National Recreation Area. On April 28, 1971, the President recommended to Congress that 537,120 acres in the Complex be designated wilderness and 1,508 acres be designated as potential wilderness. S. 2165 would designate 634,614 acres in the Complex as wilderness and 5,226 acres as potential wilderness. Since 1971 we have continued to review the wilderness proposal and identified the additional lands proposed in S. 2165 as clearly possessing wilderness characteristics.

Mount Rainier National Park contains 235,612 acres. On December 4, 1974, the President recommended to Congress the designation of 208,000 acres as wilderness and 165 acres as potential wil-

derness. Based on further review, we support S. 2165 which would designate 216,885 acres as wilderness.

If I may, Mr. Chairman, I would like to address each of our perfecting amendments in the order in which they appear in S. 2165. First, the bill incorrectly refers to the North Cascades National Park Service Complex as the "Park Complex." A similar correction should be made in the wording of Title II as well as the reference to a map depicting wilderness in the Complex in Section 201(a)(2).

Section 101(c) indicates that wilderness boundaries at Olympic National Park shall be drawn "... no more than two hundred feet from the centerline of any paved road." While we agree with this concept where there are no improvements in place or proposed to be constructed or natural features which more logically control the placement of the wilderness boundary adjacent to roads, in places such as Hurricane Ridge, this statement would cause developments to be included within wilderness. We suggest that the bill be amended to remove this language and that report language clarify the intent of this provision to apply only to those areas where the road is the sole controlling factor. Where developments are present or the wilderness boundary otherwise departs from this general control we suggest that the map reference apply. We also suggest that the word "paved" be removed and reference be made simply to roads, both paved and unpaved. This will also be true at the other two units included in Titles II and III.

Section 102 authorizes the maintenance and eventual replacement of the Wolf Creek underground powerline to Hurricane Ridge. We strongly support the inclusion of this corridor within the wilderness so long as we are given the opportunity to maintain and eventually replace it.

Section 103 authorizes funds not to exceed \$155,000 to be paid by the Secretary of the Interior to the Clallam County Historical Society and Museum of Port Angeles, Washington. Mr. Chairman, the Olympic National Park Visitor Center in Port Angeles was originally built in the 1950's as a cooperative effort between the National Park Service and the Clallam County Historical Society on land which had been donated to the park by a local citizen. The Society sponsored a fundraising drive in order to build the museum, which was to serve the dual purpose of providing them with a historical museum to commemorate the pioneers of the Olympic Peninsula and Olympic National Park a place for interpretation of significant natural and human history of the peninsula. Over the years there has been a substantial increase in park visitation, and the utilization of the space has evolved to the point that the building can no longer accommodate the needs of both the Society and the park. Section 103 would authorize the National Park Service to purchase the Society's possessory interest in the building, and we have no objection to this measure. We do note, however, that funds have not been budgeted for this purpose and there are no assurances that we can provide such a payment to the Society in the near future under existing fiscal conditions and Departmental priorities.

Mr. Chairman, subsections 104 (a) through (c) make several technical changes in the 1942 law applicable to the enforcement of laws and regulations in Olympic National Park. Subsection (a) increases the maximum fine for a misdemeanor violation of park regulations

to the amount set forth for misdemeanors generally under Section 3571 of Title 18, United States Code (\$25,000); Subsection (b) adds references to machinery, logging equipment, motor vehicles, aircraft, and boats to the list of properties that may be forfeited by violators of certain park regulations; and Subsection (c) adds language clarifying that fugitives shall be treated the same within the park as elsewhere in the State of Washington. Subsection (d) makes technical amendments to the description of lands excluded from the park in a 1986 law.

We support the amendments in Section 104. We believe the law enforcement provisions in Subsections (a) through (c) will bring the statute up to date. The updated fine and forfeiture provisions will deter such activities as timber trespass, for example, involving the destruction of trees and other natural resources worth many thousands of dollars on the commercial market. We do recommend the following editorial amendments to this Section:

1. On page 5, line 2, strike "penalty."
2. On page 6 line 5, insert "of" after "forfeiture."
3. On page 6, lines 9 and 10, strike "revising the boundary of Olympic National Park, as amended."

As noted earlier, Title II should be amended to read "NORTH CASCADES NATIONAL PARK SERVICE COMPLEX—WILDERNESS". Similarly, Section 201(a)(2) requires this change.

Section 201(c) specifies that wilderness boundaries shall be no more than two hundred feet from the centerline of any paved road. As in the discussion regarding Olympic National Park, we suggest that this reference be removed and report language which speaks simply of roads be substituted.

Section 203 amends the Act of October 2, 1968, which established the North Cascades National Park Service Complex by enumerating those lands within the Complex which are authorized pursuant to the Federal Power Act (41 Stat. 1063) as amended. We suggest that after the word "Area" in line 18, page 10 the following be added: "and existing hydrologic monitoring stations necessary for the proper operation of the hydroelectric projects listed herein." The effect of this language is to assure management of these project that their ability to conduct scientific data collection attendant to their operations of the various projects will not be diminished in any way by designation of wilderness within the Complex.

Mr. Chairman, the placement of visitor contact and administrative facilities is often shrouded in controversy and confusion to the point that for many the discussion is meaningless. Let me assure you, however, that these locations have great impact on both the administration of park units as well as visitors' appreciation and understanding of them. Visitation patterns long established in the Skagit District of the North Cascades Complex and the fact that National Park Service facilities now in place were inherited from the Forest Service create complex problems for administration and information dissemination. Several years' worth of exhaustive investigation and planning have brought us to the realization that a backcountry information station similar to the one hand-crafted by Student Conservation Association employees in the early 1980's at the Marblemount administrative site needs to be located outside the present boundaries of the Complex. Similarly, the Complex

headquarters has historically been located outside the boundaries in rental office space in Sedro Wooley. There currently is not sufficient office space available in that general locale, and a headquarters building site is being requested outside the present Complex boundaries. Our proposal is considerably less ambitious than S. 2165 in that acreages for the two sites have been reduced to 5 and 10 acres respectively. We suggest that Section 204 be amended accordingly;

1. On page 10, line 24 and 25 strike “, on a willing seller basis,” and insert “with the consent of the owner”.

2. On page 11, line 1 add “Service Complex” after “Park” to correspond with earlier comments.

3. On page 11, line 2 strike “visitor and” and insert “back-country”.

4. On page 11, line 3 strike “twenty acres in fee and eighty acres in easements.” and insert “five acres.”

5. On page 11, line 6 strike “on a willing seller basis,” and insert “with the consent of the owner.”

6. On page 11, line 4 should be moved to a position at the end of the subsection.

Once again, Mr. Chairman, we must note that funds for this purpose are not currently budgeted and will have to compete in priority with other National Park Service land acquisition needs.

Section 206 would amend the Act of October 2, 1968 (82 Stat. 928; 16 U.S.C. 90c-1) by eliminating Subsection 402(b) and inserting language which would permit the disposal of rock, sand and gravel within the Lake Chelan National Recreation Area to the residents of Stehekin for local use. It is our contention that absent the removal of Subsection 402(b) the National Park Service has all the authority it needs to dispose of sand, rock and gravel in the manner called for in the amendment. Similarly, we are unaware of any management concerns derived from the practical application of authorities contained in Subsection 402(b).

Subsection 301(b)(2) dealing with potential wilderness additions is unnecessary because Subsection 301(a) contains no wilderness designation. We recommend, therefore, that this provision be deleted from the bill.

On page 16, line 7 Mount Rainier National Park map reference “105-80 (010B)” should read “105-80,010B”.

References to the Mount Baker-Snoqualmie National Forest on page 17, lines 17 and 25 should refer to the Snoqualmie National Forest, as the consolidation is purely an administrative one with no legal standing.

Finally, we would recommend the addition of a new Section 303 entitled “Authorization for Paradise Powerline.” The text should read, “The Secretary is authorized to maintain and replace as appropriate, the Paradise powerline from Longmire to Paradise.” This line is both underground as well as aerial, the former being permitted under National Park Service management policies for wilderness while the latter is not. This new section would permit the continued operation and maintenance of the line while declaring the area wilderness.

Mr. Chairman, this concludes my formal testimony on S. 2165. I would be pleased to respond to any questions you or other Members of the Committee may have at this time.

ADDITIONAL VIEWS OF SENATOR McCLURE

The close of the second session of a Congress usually produces some rather remarkable legislative endeavors, most of which are bad, and some of which, unfortunately, find their way into the statute books. I fear that we may have contributed our share to that with the language which the Committee agreed to which quite gratuitously preempts the laws of the State of Washington to reserve a water right to all water within the areas designate as wilderness. Unlike other reservations, such as that done on the El Malpais legislation, we are not reserving water for any specified purpose. The water is not being reserved because it is needed for either the units of the National Park System or for the wilderness areas. While the practical effect of what we did is probably non existent given that we are dealing with headwaters of an area which was already protected under the management authorities of the National Park Service, the rationale for doing a reservation at all completely escapes me. For a century, Congress has repeatedly deferred to the States with respect to the jurisdiction over water. Granted, the Federal government has the authority to completely preempt all State water law. However, Congress has traditionally resisted that temptation. Federalism may not be dead as a result of what we did today, but it probably is confused.

Putting aside the issue of what is gained by the designation of lands within units of the National Park System as wilderness, unless the National Park Service is completely incompetent or is deliberately sabotaging our parks, there is not one objective in the Wilderness Act which does not already exist in the 1916 Organic Act for the Park Service. In the event anyone forgets that mandate, it is that: "the fundamental purpose of the said parks, monuments, and reservations" is "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." (39 Stat. 535) I am unaware of any instance in which the National Park Service has been unable to protect park resources because of State water laws. Where necessary because State law does not recognize a given park objective as a beneficial use, the reserved rights doctrine has filled the gap. All wilderness does is eliminate certain development options which were otherwise available under park management. The euphoria of designating lands as wilderness really should be tempered by remembering that when the areas were originally set aside as parks, they were protected for all time.

Assuming that the National Park Service has been able to obtain whatever water rights needed to preserve park resources, the designation of certain areas as wilderness should hardly give rise to an effort to reserve additional amounts, except for that persistent

desire by some to simply impress upon the States that in their view the question of State rights was settled with finality and extreme prejudice at Appomattox. In this instance, there is no reason to believe that any additional reservation is needed for any purpose whatsoever.

While I do think that the reservation does no practical harm, aside from being an unnecessary preemption of State water law, I am concerned that anyone may think that this is a model for other areas not involving headwaters in Washington State. I am concerned that we did not also expressly disclaim any implied reservation of water given the recent propensity of certain courts to divide hidden intent to preempt State law at every opportunity. I am also concerned that we did not follow the rulings of the Supreme Court in *Cappaert v. United States* and *United States v. New Mexico*, but since we have no identified reasons for making this reservation, it probably is foolish to consider either purposes or quantity. Under traditional concepts, where it is necessary to preempt State law and reserve water, the reservation is limited only to that amount which is necessary to achieve the primary purposes of the withdrawn lands. In this instance, the Committee chose to reserve all the rights to all the water but then undertook to limit the exercise to an undefined term of wilderness values. It is unclear what that means given that the basic park values were already fully protected. My guess is that we have undertaken a blanket preemption which will never need to be used. At a minimum, I hope it makes it clear that this is a nonconsumptive use and will not in any manner affect or prejudice the State of Washington from granting and administering water rights with respect to these waters outside the wilderness areas. I am not completely comfortable in this assertion, but undoubtedly many lawyers will make vast sums of money explaining what it was that we intended. In the final analysis, however, this simply stands as a preemption for the sake of preemption.

The requirement that the Secretary promptly perfect this right in a general stream adjudication is similarly baffling. I would hope that the intent was not to prohibit the Secretary from following current Department practice to apply for the right under State law. Since there is no general stream adjudication for him to use, I suppose we should not be too surprised if "promptly" winds up being a very long time. There is a minimum element of comity implicit in the concept of federalism which demands that if the federal government wishes to preempt State law to reserve a quantity of water for federal purposes, we should have the decency to tell the State what we have done so that the State engineer can deal with future appropriation requests. A permanent unquantified federal water right acts as a cloud over all future attempts by the State to plan for the future. My views with respect to FERC's curious interpretations of federalism and statutory construction, and the court's support and occasional promptings, in cases such as *First Iowa* and *Pelton Dam* do not need to be repeated. I am concerned that Congress is beginning to join in.

Certainly we have the authority to do what we did today. The sole redeeming value is that for a change the proper Branch of government exercised the authority which is assigned to the Legislative Branch by the Constitution. Unfortunately there was no reason to exercise that authority, and I think we are the poorer for it.

JAMES A. McCLURE.

ADDITIONAL VIEWS OF SENATOR WALLOP

I want to express my complete opposition to the action of the Committee with respect to the issue of reserved water rights in this measure. I am dismayed both by the language finally included in the bill and by the process which arrived at the language. I had been informed the night before the business meeting that language would be offered which would reserve water only to the extent needed, if any water was in fact needed. While I think the Committee could rather easily have determined how much water is needed when the areas under consideration consist of headwaters located within an existing National Park, I was prepared to reluctantly agree to reporting the measure and note that we had undertaken a meaningless exercise. In fact, different language was offered which effected a complete preemption of State law to reserve *all* rights to *all* water which originated or flowed through the areas, regardless of need. It was a gratuitous preemption for the sake of preemption. It mattered little that the stated purpose of the amendment was to reserve only what was needed, since the language was clear on its face. As a result of a Committee discussion which resembled something from Lewis Carroll, we now have language which may in fact be worse. Given the trench warfare we have had over federal preemption on issues such as nuclear waste and the effort that went into language on water rights on coal slurry, I have no explanation for the travesty which the Committee has reported. I can only assume that had this language actually been circulated to the Committee prior to the business meeting, we would have had the good judgement to either reject it out of hand, or at least reformed it back to the language which some of us assumed was to be offered.

What the Committee actually reported is simply intolerable to anyone who cares in the slightest about the primacy of State jurisdiction over water rights. What we did is even more pernicious, if that is possible, than the continued assaults from FERC and other agencies who seem dedicated to making State jurisdiction over anything a matter of ancient history. I feel somewhat obliged to remind my colleagues that the idea of States was not a bad joke dreamed up by the founding fathers during a late night session at the local tavern. Federalism involves a certain recognition that various levels of government are best able to provide for the needs of the citizens of this Nation. It is not well served when the federal level embarks on a calculated effort to destroy other levels. For a century, the Federal Government has recognized the unique system of water rights which apply in the West. Congress has consistently deferred to the mixture of riparian and appropriative rights which exist in the West. The Congress could have ignored the early growth of the doctrine of prior appropriation, but chose not to. Rather, beginning in 1866, Congress chose to recognize the patterns of water rights which were evolving. Various statutes in fact re-

quired individuals to acquire rights prior to being granted federal permits, licenses, or patent. However complex, the water rights regimes in the Western States have served both the States and this Nation well. As the Public Land Law Review Commission stated in its report:

In nearly 100 years of development, state water law has achieved a reasonable certainty of results which has permitted substantial public and private development in the West. While sometimes necessarily complex, the state administrative and judicial procedures have provided a means to determine security of rights to the use of water.

To reverse that defense for no identifiable reason should not be tolerated.

The problem of federal reserved rights is not new, although it has taken a far more ominous aspect recently. The National Water Commission concluded in its report in 1973 that:

... the reservation doctrine frustrates sound planning in the public and private sectors of the economy. The prospective claims of the government are highly uncertain as to time, manner and quantity of use. Consequently, no planner or investor can establish a meaningful water budget. It is impossible to prove how many non-federal projects were not undertaken because of these uncertainties, but statements to the Commission reveal profound concern on the part of state officials.

That frustration has only been compounded by federal agencies more interested in empire building than in administering federal laws as enacted and courts which use some judicial ouija board to divine Congressional intent in order to reform laws to accomplish not what Congress enacted, but what the particular court has decided Congress would have enacted if only we were as enlightened as the judge. For that reason I fully support Senator McClure's decision to make the Congress address the question of water every time we consider legislation which has the potential for some agency or court to "find" an implied reservation of water. This decision does not unduly complicate our process, any more than deciding on boundaries, on whether or not to protect existing rights, to authorize acquisition by donation only, or by purchase, or by condemnation. The questions which need to be asked are also fairly easy:

- (1) Does the federal government need to acquire water?
- (2) If it does, for what purpose and how much?
- (3) Does State law recognize that purpose as one for which rights can be acquired?

Only when the answer to the last question is no is there a reason to consider an express reservation of water. The answer does not require a reservation, however, because it is not always the case that a reservation is necessary (where for instance we are dealing with headwaters which could not be threatened) or warranted (where the purpose is not sufficiently important to justify a pre-emption). There will be instances where a reservation is needed to establish a valid purpose, and that is a decision which Congress is

perfectly capable of making. Having established the purpose, there is no reason why the United States should not then proceed through the State process to perfect its rights and ensure that the right is reflected in the State's inventory.

What concerns me so much with this amendment is that here was not the lightest effort to inquire as to whether there were any objectives which were not already fully achieved either by existing reservations or as a matter of State law. There was also not the slightest effort made to determine whether the physical setting of the new wilderness areas (headwaters within an existing National Park) obviated the need for a reservation. The amendment does not speak to any purpose, is not narrowly defined, nor does it provide any gauge as to what its intent is. On its face, the amendment effects a complete preemption of all possible rights on all waters with a subsequent limitation on how those rights may be exercised. The amendment may effectively preclude any further appropriation downstream for any purpose ever. It may not matter that there is water flowing to the sea, because the State may find that there are no rights left to grant for any purpose. I assume that the mention of valid existing rights would serve to protect current riparian owners, but it is uncertain as to whether future owners would similarly be protected. The concluding sentence about promptly claiming the rights in a general stream adjudication is simply nonsense. To deliberately limit the federal government in this manner so that the right is never perfected goes beyond anything else. It is not the purpose of federal legislation to force the State to institute general stream adjudications on a routine basis. This is some children's game of "I've got something but I won't tell you what it is" The State of Washington deserves better from this Committee.

My final concern is that this is all gratuitous. However warm it makes you feel to designate these lands as wilderness, not one bit of protection will be added. It was an earlier Congress which made the hard calls and set aside these lands in a manner which would leave them unimpaired for future generations. Wilderness sounds nice, but does little but ensure that the National Park Service does not seek appropriations for visitor facilities or campgrounds in the areas designated. That is the current situation under their general management plan, and if Congress wishes to lock in that plan, I have no objection. We should, however be honest and remember that the credit for preserving this area belongs to those who went before. That fact makes this preemption all the more distasteful. I hope that upon reflection, the Senate will be more responsible.

I hope that the Governors of the various States pay close attention to what we have done, or proposed doing, during this Congress. We have had instances where the federal and State governments have been able to cooperate within the State process. For example, in Colorado the Fish and Wildlife Service plans to acquire certain water rights pursuant to State law and the State has agreed to retire those rights and convert them into in stream flows to protect an endangered species. That is federalism. The Senate has also passed legislation affecting Idaho which relies on the State providing whatever water rights are needed. In that instance a reserved right would have been not only meaningless but counterproductive since the streams were already fully appropriated. I appreciate the

rush in the closing days of a Congress, but that does not excuse this type of action. Certainly every area is unique with its own particular problems. We are not so overworked that we can not be creative in arriving at solutions, nor are we so wise that we can not have the simple courtesy to consult with the State to determine whether or not anything needs to be done at all. This is an instance where geography alone should have dictated the result.

MALCOLM WALLOP.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 2165, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

An Act To accept the cession by the State of Washington exclusive jurisdiction over the lands embraced within the Olympic National Park, and for other purposes, approved March 6, 1942 (56 Stat. 135)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the Legislature of the State of Washington, approved March 8, 1941 (Chapter 51 of the Laws of 1941 of the State of Washington), ceding to the United States exclusive jurisdiction over and within all the territory included on March 8, 1941, in the tract of land in the State of Washington, set aside for the purposes of a national park and known as the Olympic National Park, are hereby accepted. Subject to the reservations made by the State in the act of cession, the United States hereby assumes sole and exclusive jurisdiction over such territory.

SEC. 2. The park shall constitute a part of the United States judicial district for the western district of Washington, and the district court of the United States in and for said district shall have jurisdiction over all offenses committed within the boundaries of the park. All fugitives from justice taking refuge in the park shall be subject to the same laws as refugees from justice found in the State of Washington. (16 U.S.C. sec. 256a.)

SEC. 3. All hunting or the killing, wounding, or capturing at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited within the limits of the park, nor shall any fish be taken out of any of the waters of the park, except at such seasons and at such times and in such manner as may be directed by the Secretary of the Interior. The Secretary of the Interior shall make and publish such general rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonderful objects within the park, and for the protection of the animals and birds in the park from capture or destruction, and to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the waters in the park. Possession within the park of the dead bodies or any part thereof of any wild bird or animal shall be prima facie evidence

that the person or persons having the same are guilty of violating this Act. Any person or persons, stage or express company, railway or other transportation company, who knows or has reason to believe that such wild birds, fish, or animals were taken or killed contrary to the provisions of this Act or the rules and regulations promulgated by the Secretary of the Interior, and who receives for transportation the dead bodies or any part thereof of the wild birds, fish, or animals so taken or killed, or who shall violate any of the other provisions of this Act, or the rules and regulations, with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities, or wonderful objects within the park, or for the protection of the animals, birds, and fish in the park, or who shall within the park commit any damage, injury, or spoliation to or upon any building, fence, sign, hedge, gate, guidepost, tree, wood, underwood, timber, garden, crops, vegetables, plants, land, springs, mineral deposits, natural curiosities, or other matter or thing growing or being thereon, or situated therein, shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than **[\$500]** \$25,000 or imprisonment not exceeding six months, or both, and be adjudged to pay all the costs of the proceedings.

[SEC. 4. All guns, traps, nets, seines, fishing tackle, teams, horses, or means of transportation of every nature or description used by any person or persons within the limits of the park when engaged in killing, trapping, ensnaring, taking, or capturing such wild birds, fish, or animals contrary to the provisions of this Act or the rules and regulations promulgated by the Secretary of the Interior shall be forfeited to the United States and may be seized by the officers in the park and held pending prosecution of any person or persons arrested under the charge of violating the provisions of this Act, and upon conviction under this Act of such person or persons using said guns, traps, nets, seines, fishing tackle, teams, horses, or other means of transportation, such forfeiture shall be adjudicated as a penalty in addition to the other punishment prescribed in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior: *Provided*, That the forfeiture of teams, horses, or other means of transportation shall be in the discretion of the court.]

SEC. 4. All guns, bows, traps, nets, seines, fishing tackle, clothing, teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or means of transportation of every nature or description used by any person or persons or organizations within the limits of the park when engaged in or attempting to engage in killing, trapping, ensnaring, taking or capturing such wild birds, fish or animals, or taking, destroying or damaging such trees, plants, or mineral deposits contrary to the provisions of this Act or the rules and regulations promulgated by the Secretary of the Interior shall be forfeited to the United States and may be seized by the officers in the park and held pending prosecution of any person or persons or organization arrested under or charged with violating the provisions of this Act, and upon conviction under this Act of such persons or organizations using said guns, bows, traps, nets, seines, fishing tackle, clothing, teams, horses, machinery, logging equipment,

motor vehicles, aircraft, boats, or other means of transportation of every nature and description used by any person or persons or organization, such forfeiture shall be adjudicated as a penalty in addition to the other punishment prescribed in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior: Provided, That the forfeiture of teams, horses, machinery, logging equipment, motor vehicles, aircraft, boats, or other means of transportation shall be in the discretion of the Court.

SEC. 5. All fugitives from justice taking refuge in Olympic National Park shall be subject to the same laws as refugees from justice found in the State of Washington.

SEC. [5.] 6. Upon the recommendation and approval of the Secretary of the Interior of a qualified candidate, the United States District Court for the Western District of Washington shall appoint a park commissioner, who shall have jurisdiction to hear and act upon all complaints made of any violations of law or of the rules and regulations made by the Secretary of the Interior for the government of the park and for the protection of the animals, birds, and fish, and objects of interest therein, and for other purposes authorized by this Act. Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with a violation of the rules and regulations, or with a violation of any of the provisions of this Act prescribed for the government of the park and for the protection of the animals, birds, and fish in the park, and to try the person so charged, and, if found guilty, to impose punishment and to adjudge the forfeiture prescribed. In all cases of conviction an appeal shall lie from the judgment to the commissioner to the United States District Court for the Western District of Washington; and the district court shall prescribe the rules of procedure and practice for the commissioner in the trial of cases and for appeal to the district court.

SEC. [6.] 7. The park commissioner shall also have power to issue process, as hereinbefore provided, for the arrest of any person charged with the commission within the park of any criminal offense not covered by the provisions of section 3 of this Act, to hear the evidence introduced, and, if he is of the opinion that probable cause is shown for holding the person so charged, for trial, shall cause such person to be safely conveyed to a secure place of confinement within the jurisdiction of the United States District Court for the Western District of Washington, and certify a transcript of the record of his proceedings and the testimony in such case to the said district court, which court shall have jurisdiction of the case. The park commissioner shall have authority to grant bail in all cases according to the laws of the United States.

SEC. [7.] 8. The park commissioner shall be paid an annual salary as appropriated for by Congress.

SEC. [8.] 9. All fees, costs, and expenses arising in cases under this Act and properly chargeable to the United States shall be certified, approved, and paid as are like fees, costs, and expenses in the courts of the United States.

SEC. [9.] 10. All fees, fines, costs, and expenses imposed and collected shall be deposited by the commissioner, or by the marshal of the United States collecting the same, with the clerk of the United States District Court for the Western District of Washington.

SEC. [10.] 11. The Secretary of the Interior shall notify in writing the Governor of the State of Washington of the passage and approval of this Act, and of the fact that the United States assumes police jurisdiction over the park. Upon the acceptance by the Secretary of the Interior of further cessions of jurisdiction over lands now or hereafter included in the Olympic National Park, the provisions of sections 2 to 9, inclusive, shall apply to such lands.

AN ACT

To revise the boundaries of Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) The boundary of Olympic National Park, Washington, is hereby revised to include within the park—

(1) all submerged lands and waters of Lake Ozette, Washington, and the Ozette River, Washington;

(2) all surveyed and unsurveyed islands, *above the point of lowest low tide*, lying off the coast of the State of Washington in the Pacific Ocean between latitudes 48 degrees 23 minutes north and 47 degrees [38] 34 minutes [north,] north: *Provided, That such lands as are identified in this paragraph shall continue to be open to fishing and to the taking of shellfish in conformity with the laws and regulations of the State of Washington;*

* * * * *

(b) The boundary of Olympic National Forest, Washington, is hereby revised to include in the national forest approximately three thousand three hundred and fifty-two acres and to exclude from the national forest approximately nine thousand three hundred and twenty-four acres, as generally depicted on the maps entitled "Boundary Modifications, Olympic National Forest and Olympic National Park", numbered 149/60,030A, sheets 1 through [10], 9, and dated September 1986, which shall be on file and available for public inspection in the office of the Forest Service, United States Department of Agriculture.

* * * * *

SEC. 2. (a) Federal lands, waters, and interests therein formerly within the boundary of Olympic National Forest which are included within the boundary of Olympic National Park pursuant to section 1 of this Act are, subject to valid existing rights, hereby transferred to the administrative jurisdiction of the Secretary of the Interior for administration as part of the park, and shall be subject to all the laws and regulations applicable to the park: *Provided further, That within section 15, township [15] 24 north, range 9 west Willamette meridian, and within an area extending not more than one mile north of such section, nothing herein shall be construed to*

limit or otherwise modify the authority of the Secretary of Agriculture to design and construct a forest logging road east of the park boundary: *Provided, however,* That the Secretary of Agriculture shall [not] construct the road as close as practically possible to the park boundary but not more than five hundred feet east of the divide. Following construction, the Secretary of the Interior is hereby authorized and directed to redescribe and relocate the boundary of the park along the eastern clearing limits of the road.

* * * * *

SEC. 4. Effective upon acceptance thereof by the State of Washington, the jurisdiction which the United States acquired over those lands excluded from the boundaries of Olympic National Park by this Act is here by retroceded to the State.

SEC. [4.] 5. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, except that the total amounts authorized to be appropriated for the purpose of acquisition of lands, waters, and interests therein pursuant to this Act shall not exceed \$1,000,000.

NORTH CASCADES COMPLEX

An Act to establish the North Cascades National Park and Ross Lake and Lake Chelan National Recreation Areas, to designate the Pasayten Wilderness and to modify the Glacier Peak Wilderness, in the State of Washington, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I.—NORTH CASCADES NATIONAL PARK

* * * * *

TITLE III.—LAND ACQUISITION

SEC. 301. Within the boundaries of the park and recreation areas, the Secretary of the Interior (hereinafter referred to in this Act as the "Secretary") may acquire lands, waters, and interests therein by donation, purchase with donated or appropriated funds, or exchange, except that he may not acquire any such interests within the recreation areas without the consent of the owner, so long as the lands are devoted to uses compatible with the purposes of this Act. Lands owned by the State of Washington or any political subdivision thereof may be acquired only by donation. Federal property within the boundaries of the park and recreation areas is hereby transferred to the administrative jurisdiction of the Secretary for administration by him as part of the park and recreation areas. The national forest land within such boundaries is hereby eliminated from the national forests within which it was heretofore located.

(b) The Secretary is hereby authorized to acquire, with the consent of the owner, lands outside of the authorized boundaries of North Cascades National Park Service Complex for the purpose of construction and operation of a backcountry information center not to exceed five acres. The Secretary of the Interior is further authorized to acquire with the consent of the owner, lands for the construction

of a headquarters and administrative site or sites, for the North Cascades National Park, Ross Lake National Recreation Area, and Lake Chelan National Recreation Area not to exceed 10 acres. The lands so acquired shall be managed as part of the park.

* * * * *

TITLE IV.—ADMINISTRATIVE PROVISIONS

SEC. 401. The Secretary shall administer the park in accordance with the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4), as amended and supplemented.

SEC. 402. (a) [The Secretary shall administer the recreation areas in a manner which in his judgment will best provide for (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of renewable natural resources and the continuation of such existing uses and developments as will promote or are compatible with, or do not significantly impair, public recreation and conservation of the scenic, scientific, historic, or other values contributing to public enjoyment. In administering the recreation areas, the Secretary may utilize such statutory authorities pertaining to the administration of the national park system, and such statutory authorities otherwise available to him for the conservation and management of natural resources as he deems appropriate for recreation and preservation purposes and for resource development compatible therewith.] *The Secretary shall administer the recreation areas in a manner which in his judgement will best provide for (1) public outdoor recreation benefits and (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment. Within that portion of the Lake Chelan National Recreation Area which is not designated as wilderness, such management, utilization, and disposal of renewable natural resources and the continuation of existing uses and developments as will promote, or are compatible with, or do not significantly impair public recreation and conservation of the scenic, scientific, historic, or other values contributing to public enjoyment, are authorized. In administering the recreation areas, the Secretary may utilize such statutory authorities pertaining to the administration of the national park system, and such statutory authorities otherwise available to him for the conservation and management of natural resources as he deems appropriate for recreation and preservation purposes and for resource development compatible therewith. Within the Ross Lake National Recreation Area the removal and disposal of trees within power line rights-of-way are authorized as necessary to protect transmission lines, towers, and equipment;" : Provided, That to the extent practicable, such removal and disposal of trees shall be conducted in such a manner as to protect scenic viewsheds.*

(b) [The lands within the recreation areas, subject to valid existing rights, are hereby withdrawn from location, entry, and patent under the United States mining laws. The Secretary, under such reasonable regulations as he deems appropriate, may permit the removal of the nonleasable minerals from lands or interest in lands within the recreation areas in the manner prescribed by section 10

of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and he may permit the removal of leasable minerals from lands or interests in lands within the recreation areas in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significant adverse effects on the administration of the recreation areas.] *The lands within the recreation areas, subject to valid existing rights, are hereby withdrawn from all forms of appropriation or disposal under the public land laws, including location, entry, and patent under the United States mining laws, and disposition under the United States mineral leasing laws; Provided, however, that within that portion of the Lake Chelan National Recreation Area which is not designated as wilderness, sand, rock and gravel may be made available for sale to the residents of Stehekin for local use so long as such sale and disposal does not have significant adverse effects on the administration of the Lake Chelan National Recreation Area.*

* * * * *

TITLE V.—SPECIAL PROVISIONS

* * * * *

SEC. 505. Nothing in this Act shall be construed to supersede, repeal, modify, or impair the jurisdiction of the Federal Power Commission under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), [in the recreation areas.] *in the lands and waters within the Skagit River Hydroelectric Project, Federal Energy and Regulatory Commission Project 553, including the proposed Copper Creek, High Ross, and Thunder Creek elements of the Project; and the Newhalem Project, Federal Energy and Regulatory Commission Project 2705, within the Ross Lake National Recreation Area; the lands and waters within the Lake Chelan Project, Federal Energy and Regulatory Commission Project 637; the Company Creek small hydroelectric project at Stehekin within the Lake Chelan National Recreation Area; and existing hydrologic monitoring stations necessary for the proper operation of the hydroelectric projects listed herein.*

* * * * *

WILD AND SCENIC RIVERS ACT

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

* * * * *

SEC. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

* * * * *

(60) Klickitat, Washington: The segment from its confluence with Wheeler Creek, Washington, near the town of Pitt, Washington, to its confluence with the Columbia River; to be classified as a recreation river and to be administered by the Secretary of Agriculture. *The boundaries of the designated portions of the Klickitat River shall be as generally depicted on a map dated November, 1987, and entitled "Klickitat National Recreation River, River Management Area: Final Boundary", which is on file in the office of the Chief, Forest Service, Washington, DC.*

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TARGHEE NATIONAL FOREST LAND EXCHANGE

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 4028]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 4028) to authorize the Secretary of Agriculture to exchange certain national forest system lands in the Targhee National Forest, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

EXCHANGE AUTHORITY

SECTION 1. Notwithstanding the requirements contained in section 1 of the Act of March 20, 1922, and that portion of section 206(b) of the Act of October 21, 1976, which provides that when the Secretary of Agriculture exchanges lands, the lands exchanged must be located in the same State, and must be included within the exterior boundaries of a National Forest—

(a) the Secretary of Agriculture (hereinafter referred to as "the Secretary") is authorized to exchange those Federally owned lands within the Targhee National Forest depicted on the map entitled "Targhee Exchange, Wyoming—Proposed", dated April 15, 1988, comprising approximately two hundred and seventy acres, for non-Federally owned lands within, adjacent or in close proximity to the Targhee National Forest, including lands outside the exterior boundary of the forest;

(b) the values of lands exchanged by the Secretary under this Act shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require so long as payment does not exceed 25 per centum of the total values of the lands or interests transferred out of Federal ownership. The Secretary shall try to reduce the amount of payment of money to as small an amount as possible;

(c) the map described in subsection (a) and a legal description of such lands depicted therein, shall be on file and available for public inspection in the office

of the Chief of the Forest Service, Department of Agriculture, Washington, DC. Such map and legal description shall have the same force and effect as if included in this Act: *Provided*, That actual acreage and boundaries may be adjusted to equalize values and the correction of clerical and typographical errors in such legal description may be made by the Secretary; and

(d) any lands acquired by the Secretary under this Act shall become part of the Targhee National Forest and the exterior boundary of the Targhee National Forest shall be revised to include such lands.

SAVINGS CLAUSE

SEC. 2. Except as specified in section 1, this Act shall not be construed as modifying any other requirements of existing law or regulations.

TIME LIMIT

SEC. 3. As soon as practicable, but not later than nine months after the date of enactment of this Act, the Secretary shall carry out the exchange authorized by section 1.

PURPOSE OF THE MEASURE

The purpose of H.R. 4028, as ordered reported, is to authorize the Secretary of Agriculture to exchange approximately 270 acres of the Targhee National Forest in Wyoming for private lands inside or directly outside the boundaries of Targhee National Forest in either Wyoming or Idaho.

BACKGROUND AND NEED

The South Fork of the Snake River originates in Yellowstone National Park, flows through Grand Teton National Park and then turns northwesterly through Idaho. In 1980, a 62 mile stretch of the Snake, from Henry's Fork to Palisades Dam, was identified by the U.S. Fish and Wildlife Service as the most important wildlife ecosystem in Idaho. It provides habitat for over 50 species of mammals and 180 species of birds including nesting sites for bald eagles, great blue herons and Canada geese. Other wildlife species include mule deer, whitetail deer, elk, moose, beaver and mink. The river's trout fishery includes large cutthroat and brown trout.

The South Fork Canyon includes private land approved by the local County Planning Commission for development. H.R. 4028 would lead to increased protection for the South Fork's wildlife and recreation resource by enabling the Forest Service to acquire private lands in the South Fork Canyon in Idaho through a land exchange with the Grand Targhee resort. Grand Targhee is a ski area located on Targhee National forest lands in Wyoming and operates under a special use permit from the Forest Service. The resort would like to expand by acquiring ownership on the land in and around its operation.

It is anticipated that approximately 700 acres of South Fork Canyon lands in Idaho would be traded for the Grand Targhee Resort and thus become part of the Targhee National Forest. Legislation is necessary for such an exchange because the Federal Land Policy and Management Act prohibits national forest land exchanges across state lines.

LEGISLATIVE HISTORY

H.R. 4028 was introduced on February 25, 1988 and passed the House of Representatives on May 24, 1988. A similar measure, S.

2285, was introduced by Senators Symms and Wallop on April 14, 1988. the Subcommittee on Public Lands, National Parks and Forests did not hold a hearing on either measure.

At the business meeting on Wednesday, August 10, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 4028, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on August 10, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 4028 if amended, as described herein.

COMMITTEE AMENDMENTS

During the consideration of H.R. 4028, the Committee adopted an amendment in the nature of a substitute, which made technical and clarifying changes to the Act.

SECTION-BY-SECTION ANALYSIS

Section 1 exempts the Targhee land exchange from the provisions of previous acts that require such exchanges to be located in the same state and which require acquired lands to be within the boundaries of a national forest.

Subsection (a) of section 1 authorizes the Secretary of Agriculture to exchange approximately 270 acres of land within the Targhee National Forest in Wyoming for private lands within, adjacent or in close proximity to the Targhee National Forest in Idaho. The national forest lands in Wyoming to be exchanged are depicted on a map entitled "Targhee Exchange, Wyoming-Proposed".

Subsection (b) restates the provisions found in the Federal Land Policy and Management Act of 1976 regarding equalizing the values of lands to be exchanged.

Subsection (c) contains the standard language regarding maps and legal descriptions that allows correction of clerical and typographical errors.

Subsection (d) would incorporate any lands acquired by the Secretary as a result of this Act into the Targhee National Forest and would modify the national forest boundary to include such lands.

Section 2 states that this Act would not modify any other applicable law or regulation with the exception that it would lift the prohibition against interstate exchanges and the requirement that exchanges be within national forest boundaries for the exchange mandated by this Act.

Section 3 requires the Secretary to complete the exchange no later than nine months after enactment.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 7, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
*Chairman, Committee on Energy and Natural Resources, U.S.
Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 4028, a bill to authorize the Secretary of Agriculture to exchange certain national forest system lands in the Targhee National Forest. The bill was ordered reported by the Senate Committee on Energy and Natural Resources on August 10, 1988.

CBO estimates that enactment of H.R. 4028 would result in net additional outlays of about \$0.1 million by the federal government over the next five years. These costs may be offset by higher permit fees in the future.

H.R. 4028 would authorize the Secretary of Agriculture, within nine months of the bill's enactment, to exchange national forest system lands adjacent to the Grand Targhee ski area in Wyoming for unspecified private lands of equal value near the Targhee forest in Idaho. Exchanges across state lines are forbidden by law unless approved by the Congress. The bill would also authorize the payment of money if lands to be exchanged are not of equal value. Cash payments would be limited to no more than 25 percent of the total value of the lands to be exchanged.

The federal land affected by this bill is currently part of a large area being leased by the Grand Targhee Resort under a special use permit. The federal government receives \$30,000 to \$50,000 in fees annually from this permit. By transferring ownership of this parcel of land to the ski operators, the federal government would lose approximately \$20,000 of these annual permit fees over the next five years. Additional costs totaling approximately \$6,000 would also be incurred for new surveying, boundary and posting work. These short-term costs may be offset in the future by higher permit fees resulting from increased development and usage of the Grand Targhee area.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4028. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4028, as reported.

EXECUTIVE COMMUNICATIONS

On September 8, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth executive views on H.R. 4028. These reports had not been received at the time the report on H.R. 4028 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act, H.R. 4028, as reported.

